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2D SESSION

S. 1817

To limit the authority of Federal courts to fashion remedies that require local jurisdictions to assess, levy, or collect taxes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 1996

Mr. GRASSLEY (for himself, Mr. HATCH, Mrs. KASSEBAUM, and Mr. BOND)
introduced the following bill; which was read twice and referred to the
Committee on the Judiciary

A BILL

To limit the authority of Federal courts to fashion remedies
that require local jurisdictions to assess, levy, or collect
taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Judicial
5 Taxation Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1 (1) a variety of effective and appropriate judi-
2 cial remedies are available under existing law for the
3 full redress of legal or constitutional violations;

4 (2) the imposition, increase, levying, or assess-
5 ment of taxes by courts is not necessary or appro-
6 priate for the full and effective exercise of remedies
7 imposed by Federal courts with appropriate jurisdic-
8 tion;

9 (3) the imposition, increase, levying, or assess-
10 ment of taxes by judicial order is—

11 (A) not an appropriate exercise of the judi-
12 cial power under the Constitution; and

13 (B) incompatible with—

14 (i) the traditional principles of the
15 laws and Government of the United States;
16 and

17 (ii) the basic American principle that
18 taxation without representation is tyran-
19 nical (because Federal courts are composed
20 of unelected officials who are not answer-
21 able to the popular will);

22 (4) when a Federal court issues an order that
23 requires or results in the imposition, increase, levy-
24 ing, or assessment of any tax, the court—

1 (A) exceeds the proper boundaries of the
2 limited jurisdiction and authority of Federal
3 courts under the Constitution; and

4 (B) impermissibly intrudes on the legisla-
5 tive functions of the democratic system of gov-
6 ernment of the United States;

7 (5) no court should enter an order or approve
8 any settlement—

9 (A) remedying a legal or constitutional vio-
10 lation by imposing, creating, increasing, levying,
11 or assessing any tax; or

12 (B) that has the effect of imposing, creat-
13 ing, increasing, levying, or assessing any tax;

14 (6) a settlement agreement or order entered by
15 a Federal court should be fashioned within the
16 framework of the budgetary restraints of any af-
17 fected State or political subdivision thereof; and

18 (7) the Congress has the authority under sec-
19 tions 1 and 2 of Article III of the United States
20 Constitution to limit and regulate the jurisdiction of
21 the inferior Federal courts, and such authority in-
22 cludes the power to limit the remedial authority of
23 such courts.

1 **SEC. 3. LIMITATION ON FEDERAL COURT REMEDIES.**

2 (a) IN GENERAL.—Chapter 85 of title 28, United
3 States Code, is amended by adding at the end the follow-
4 ing new section:

5 **“§ 1369. Limitation on Federal court remedies**

6 “(a)(1) No district court may enter any order or ap-
7 prove any settlement that requires any State, or political
8 subdivision of a State, to impose, increase, levy, or assess
9 any tax for the purpose of enforcing any Federal or State
10 common law, statutory, or constitutional right or law, un-
11 less the court finds by clear and convincing evidence,
12 that—

13 “(A)(i) there are no other means available to
14 remedy the deprivation of rights or laws; and

15 “(ii) the proposed imposition, increase, levying,
16 or assessment is narrowly tailored to remedy the
17 specific deprivation at issue;

18 “(B) the tax will not contribute to or exacer-
19 bate the deprivation intended to be remedied;

20 “(C) the proposed tax will not result in a loss
21 of revenue for the political subdivision in which it is
22 assessed, levied, or collected;

23 “(D) the proposed tax will not result in the loss
24 or depreciation of property values of the taxpayer so
25 affected;

1 “(E) the proposed tax will not conflict with the
2 applicable laws with respect to the maximum rate of
3 taxation as determined by the appropriate State or
4 political subdivision thereof; and

5 “(F) plans submitted to the court by State and
6 local authorities will not effectively redress the depri-
7 vations at issue.

8 “(2) A finding under paragraph (1) shall—

9 “(A) be subject to immediate interlocutory de
10 novo review; and

11 “(B) be reviewed by the court making the find-
12 ing at least annually with respect to the issues relat-
13 ed to the finding, whether or not a related order or
14 settlement agreement continues to apply.

15 “(3)(A) Notwithstanding any law or rule of proce-
16 dure, any aggrieved corporation, or unincorporated asso-
17 ciation or other person residing or present in the political
18 subdivision in which a tax is imposed in accordance with
19 paragraph (1) or other entity located within that political
20 subdivision shall have the right to intervene in any pro-
21 ceeding concerning the imposition of the tax.

22 “(B) A person or entity that intervenes pursuant to
23 subparagraph (A) shall have the right to—

24 “(i) present evidence and appear before the
25 court to present oral and written testimony; and

1 “(ii) appeal any finding required to be made by
2 this section, or any other related action taken to im-
3 pose, increase, levy, or assess the tax that is the sub-
4 ject of the intervention.

5 “(b) Notwithstanding any law or rule of procedure,
6 any order of a district court requiring the imposition, in-
7 crease, levy, or assessment of a tax imposed pursuant to
8 subsection (a)(1) shall automatically terminate or expire
9 on the date that is 1 year after the later of—

10 “(1) the date of the imposition of the tax;

11 “(2) the date of the enactment of the Fairness
12 in Judicial Taxation Act of 1996; or

13 “(3) an earlier date, if the court determines
14 that the deprivation of rights that is addressed by
15 the order has been cured to the extent practicable.

16 “(c) This section may not be construed to preempt
17 any law of a State or political subdivision thereof that im-
18 poses limitations on, or otherwise restricts the imposition
19 of a tax, levy, or assessment that is imposed in response
20 to a court order referred to in subsection (b).

21 “(d)(1) Except as provided in paragraph (2), nothing
22 in this section may be construed to allow a Federal court
23 to, for the purpose of funding the administration of an
24 order referred to in subsection (b), use funds acquired by

1 a State or political subdivision thereof from a tax imposed
 2 by the State or political subdivision thereof.

3 “(2) Paragraph (1) does not apply to any tax, levy,
 4 or assessment that, before the date of enactment of the
 5 Fairness in Judicial Taxation Act of 1996, has, in accord-
 6 ance with applicable State or local law, been used to fund
 7 the actions of a State or political subdivision thereof in
 8 meeting the requirements of an order referred to in sub-
 9 section (b).

10 “(e) The court shall provide written notification to
 11 a State or political subdivision thereof subject to an order
 12 referred to in subsection (b) with respect to any finding
 13 required to be made by the court under subsection (a) be-
 14 fore the beginning of the fiscal year of that State or politi-
 15 cal subdivision.

16 “(f) There shall be a presumption that the imposi-
 17 tion, increase, levying, or assessment of taxes is not a nar-
 18 rowly tailored means of remedying deprivations of Federal
 19 or State rights.

20 “(h) For purposes of this section—

21 “(1) the District of Columbia shall be consid-
 22 ered to be a State; and

23 “(2) any Act of Congress applicable exclusively
 24 to the District of Columbia shall be considered to be
 25 a statute of the District of Columbia.”.

1 (b) CONFORMING AMENDMENT.—The chapter analy-
2 sis for chapter 85 of title 28, United States Code, is
3 amended by adding after the item relating to section 1368
4 the following new item:

“1369. Limitation on Federal court remedies.”.

5 (c) STATUTORY CONSTRUCTION.—Nothing contained
6 in this Act and the amendments made by this Act shall
7 be construed to, beyond the scope of applicable law, make
8 legal, validate, or approve the use of a judicial tax, levy,
9 or assessment by a district court.

